

Note: This Petition was
filed on December 17,
2008; Superior Court of
California, County of
Orange.
Case No.30-2008

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CENTRAL JUSTICE CENTER

THE PEOPLE OF THE STATE OF
CALIFORNIA, BY AND THROUGH THE
CALIFORNIA CORPORATIONS
COMMISSIONER.

Petitioner,

VS.

PLATINUM COAST ESCROW, INC., a
California Corporation,

Respondent.

Case No.

PETITION FOR LIMITED RECEIVER

Petitioner, the People of the State of California, by and through the California Corporations Commissioner (“Commissioner” or “Petitioner”), administers the provisions of the California Escrow Law (Fin. Code¹, § 17000 et seq.)(“Escrow Law”), and the regulations issued pursuant thereto (Cal. Code Regs., tit. 10, §§ 1700 et seq.), which regulate the business and activities of independent escrow agents.

The Petitioner having issued an Order Taking Possession of the Trust Funds and Escrow

¹ All further statutory references are to the Financial Code ("Code"), unless otherwise indicated.

1 Records of Platinum Coast Escrow, Inc. pursuant to Financial Code section 17621, respectfully
2 states:

3 1. On November 18, 2002, Petitioner issued an escrow agent's license to Platinum Coast
4 Escrow, Inc., a California corporation, ("Platinum Coast" or "Respondent") pursuant to the Escrow
5 Law. Petitioner authorized Platinum Coast to engage in business as an escrow agent within the State
6 of California under that license. Platinum Coast's escrow agent's license was revoked on December
7 12, 2008.² Respondent's principal place of business on file with the Commissioner was 4500
8 Campus Drive, Suite 127-A, Newport Beach, California.

9 2. Nazih Daniel Sadek ("Sadek") is, and was at all times relevant herein, the director,
10 chief financial officer, and sole shareholder of Platinum Coast.

11 3. Miguel Angel Vazquez ("Vazquez") was at all times relevant herein the escrow
12 accountant for Platinum Coast.

13 4. On or about October 1, 2007, Petitioner commenced an administrative action against
14 Platinum Coast, seeking to revoke its escrow agent's license and to permanently bar Sadek and
15 Vazquez from further employment, management or control within the escrow industry. The
16 Commissioner alleged in his accusation that Sadek had disbursed or caused the disbursement of Platinum
17 Coast's trust account funds by pledging the trust account to obtain lines of credit and gambling
18 markers from the Wynn Las Vegas and Bellagio casinos, in violation of Code section 17414,
19 subdivision (a)(1) and sections 1738 and 1738.2 of title 10 of the California Code of Regulations.
20 The Commissioner further alleged that Platinum Coast's former escrow accountant, Vazquez, had
21 wrongfully disbursed \$24,671.16 in trust account funds to himself, thereby causing shortages to
22 occur in the trust account in violation of Code section 17414, subdivision (a)(1) and sections 1738,
23 1738.1 and 1738.2 of title 10 of the California Code of Regulations.³ Finally, the Commissioner
24 charged Platinum Coast with committing numerous books and records violations under the Escrow
25 Law, including its failure to reconcile the trust account for over one-year.

26
27 ² See *infra* at ¶ 5., for further discussion on this issue.

28 ³ On October 27, 2007, the Commissioner permanently barred Vazquez from any employment, management or control
of any escrow agent pursuant to Code section 17423.

1 5. On July 7 through July 9, 2008, a hearing was held on the Commissioner's accusation
2 before the Office of Administrative Hearings, Los Angeles ("OAH"), OAH Case Number
3 L-2007100635, captioned *In the Matter of the California Corporations Commissioner v. Platinum*
4 *Coast Escrow, Inc., et al.* The Administrative Law Judge ("ALJ") found for the Commissioner,
5 ruling that Platinum Coast's escrow agent's license was to be revoked, and that Sadek was to be
6 suspended from any position of employment, management or control of any escrow agent for a
7 period of twelve (12) months from the effective date of the court's order. On December 11, 2008,
8 the Department of Corporations ("Department") adopted the ALJ's proposed decision, effective
9 December 12, 2008.

10 6. On September 10, 2008, Vazquez entered a guilty plea for violations of Code section
11 17414, subdivision (a) (1) (unauthorized disbursement of escrow funds held in Platinum Coast's trust
12 account), in the case captioned the *People of the State of California v. Miguel Angel Vazquez*,
13 Superior Court of the State of California, County of Orange case number 07HF1609. In addition to
14 his guilty plea, Vazquez paid restitution in full of \$24,671.16 to the Orange County Probation
15 Department.

16 7. Following the commencement of the administrative action against Platinum Coast,
17 the Commissioner received new information that Sadek had possibly used trust account funds to
18 satisfy additional gambling debts incurred at the Venetian Hotel and Casino, Las Vegas, Nevada.
19 Concerned that Sadek might have misappropriated trust account assets, on or about April 8, 2008, by
20 and through its staff, the Department commenced a special examination of the books and records of
21 Platinum Coast.

22 8. The special examination revealed that Platinum Coast had removed its offices from
23 the premises or address shown on its license as 4500 Campus Drive, Suite 127-A, Newport Beach,
24 California to an undisclosed location, without the prior approval of the Commissioner in violation of
25 section 17213.1 of the Code.

26 9. The special examination further revealed that Platinum Coast had failed to perform its
27 monthly bank reconciliations on the trust account since at least January 31, 2008 in violation of
28 Code section 17404 and California Code of Regulations, title 10, section 1732.2.

1 10. In addition, the Commissioner's examiner learned that Platinum Coast had failed to
2 maintain its books and records in accordance with the Escrow Law (Code section 17000 et seq.).
3 Specifically, on or about June 13, 2008, Complainant learned that Platinum Coast had lost access to
4 its books and records, including its escrow files, located at Penn Records Management, Santa Ana,
5 California, for failure to pay rent in violation of Code of Regulations, title 10, section 1737.3. As the
6 records were at risk of imminent destruction, the Commissioner took possession of approximately
7 2,133 banker's boxes containing Platinum Coast's escrow files and other business records. The
8 Department's preliminary review of those records disclosed that the banker's boxes contained
9 Platinum Coast's escrow files in numerical order, *i.e.*, the boxes were labeled according to their
10 contents by escrow file numbers. However, the boxes themselves were not arranged in any apparent
11 order and thus would have required the Department, at a minimum, to expend hundreds of hours to
12 organize and review Platinum Coast's escrow and business records.

13 11. Respondent had failed to comply with the bonding requirements of Code section
14 17202 in that effective May 22, 2008, Bond Number 41106275 issued by Platte River Insurance
15 Company in favor of Platinum Coast was expired and no replacement bond obtained in violation of
16 section 17202 of the Code.

17 12. Platinum Coast failed to submit its annual audit report for its fiscal year ended
18 December 31, 2007. Platinum Coast's annual audit report was due to the Commissioner on or before
19 April 15, 2008. Despite having sent it two reminder letters, the Commissioner never received
20 Platinum Coast's annual audit report in violation of section 17406 of the Code.

21 13. In light of the foregoing violations, on or about June 19, 2008, pursuant to section
22 17405 of the Code, the Commissioner demanded in writing that Platinum Coast submit its books,
23 papers, and affairs to the Department for inspection. No response to the Department's demand was
24 ever received from Platinum Coast.

25 14. Petitioner has demanded that Platinum Coast cure the defects described above;
26 however, Platinum Coast remains in violation of the above-cited provisions of the Escrow Law.

27 15. Petitioner determined that the manner in which Platinum Coast was conducting its
28 business was unsafe and injurious, and on June 27, 2008, issued Platinum Coast an Order to

1 Discontinue Escrow Activities Pursuant to Financial Code Section 17415.

2 16. The failure of Platinum Coast to cure the aforementioned defects caused Petitioner,
3 on October 9, 2008, to issue a Demand For and Order Taking Possession of the Trust Account(s) and
4 Escrow Records of Platinum Coast Pursuant to Financial Code Section 17621. The order was
5 necessary to offer any possible protection to the escrow customers of Platinum Coast.

6 17. Pursuant to the Order, the Commissioner took possession of the trust account(s) and
7 existing escrow records of Platinum Coast on October 9, 2008.

8 18. Pursuant to Code section 17622, Platinum Coast had ten (10) days after the taking to
9 apply to the superior court for an order to enjoin further proceedings by Petitioner. The ten (10)
10 days provided by Code section 17622 have expired, and there has been no action commenced by
11 Platinum Coast to contest the actions of the Commissioner described in paragraph 16., above.

12 19. The Petitioner, during the special examination, conducted a review of the books and
13 records of Platinum Coast. The Department has determined that Platinum Coast holds two trust
14 accounts with Commerce West Bank, N.A. The first trust account, as of August 31, 2008, holds a
15 remaining balance of \$55,246.58. The second trust account, as of August 31, 2008, holds a
16 remaining balance of \$459,839.51. Thus, the total balance held in Platinum Coast's two known trust
17 accounts is \$515,086.09 (the "trust account funds"). The trust account funds consist exclusively of
18 outstanding checks. It should also be noted literally every escrow was a refinance transaction only.

19 20. The Department, as part of its special examination sought to obtain Platinum Coast's
20 final February 11, 2008 ledger from First American SMS, Platinum Coast's former trust accounting
21 service. However, First American SMS responded that any review of its records concerning
22 Platinum Coast would cost the Commissioner \$125.00 per hour. The Department has not inquired
23 nor obtained an estimate from First American SMS as to the amount of time required or total costs to
24 prepare Platinum Coast's records for the Commissioner's review.

25 21. The Petitioner's review of Platinum Coast's accessible books and records initially
26 disclosed a trust account shortage of: (a) \$100.00 adjustment caused by an undeposited receipt and
27 (b) \$13,762.98 in shortages in the trust account(s) caused by checks issued and paid after First
28 American SMS stopped maintaining Platinum Coast's books and records on or about February 19,

1 2008. Accordingly, the checks total \$13,862.98. Based upon its further review of the outstanding
2 check list, the Department has determined that the \$13,862.98 shortage consists entirely of
3 replacement checks, such that the trust account appears to be whole. However, without reviewing
4 the individual escrow files, the examiner cannot determine with certainty whether or not the
5 replacement checks were correctly issued by Platinum Coast. Given the volume of escrow files
6 contained in storage and the condition of the records, the Department has not had sufficient time to
7 review those records to further confirm its findings.

8 22. The Petitioner believes that a receivership is the only feasible manner in which to
9 further pursue the avenues necessary to identify all trust claimants and thereafter distribute trust
10 monies given that insufficient Platinum Coast assets exist from which to otherwise pursue the
11 necessary avenues.

12 23. Pursuant to Code section 17636, the Petitioner is authorized to petition the superior
13 court for the appointment of a receiver to wind up the affairs of a licensee after having taken
14 possession of the licensee.

15 24. The Petitioner submits that the appointment of a limited receiver by this Court over
16 Platinum Coast is necessary to properly wind up the trust account affairs of Platinum Coast and to
17 provide the greatest protection possible to the customers of Platinum Coast. The Petitioner submits
18 that a situation exists wherein irreparable harm will be suffered by the public unless and until a
19 receiver is appointed over Platinum Coast in order to wind up the trust account affairs of Platinum
20 Coast.

21 Wherefore, the Petitioner prays:

22 A. This Court issue an order naming Peter A. Davidson of the Law Firm of Moldo,
23 Davidson, Fraioli, Seror & Sestanovich, LLP as the receiver over the escrow trust funds of Platinum
24 Coast, including, but not limited to, the escrow trust account(s) and the restitution paid by Vazquez
25 to the Orange County Probation Department in the sum of \$24,671.16, and all bank and escrow
26 records pertinent thereto (the "trust property"), whether directly or indirectly, owned beneficially or
27 otherwise by, or in the possession, custody or control of Platinum Coast or Sadek, or to which
28 Platinum Coast has any right of possession, custody or control, irrespective of whomsoever holds

such property, in order to obtain an adequate accounting of Platinum Coast's trust property and trust liabilities; secure a marshaling of such property; and to forthwith begin winding up and liquidating the trust property affairs of Platinum Coast in accord with the provisions of the California Escrow Law, and for said order appointing such receiver to further provide that:

(1) The receiver prior to entry upon the duties described herein, take an oath to faithfully perform the duties of a receiver and to observe all of the instructions of this Court;

(2) The receiver is authorized, empowered and directed:

(a) To review, observe, discover and make notes regarding all the trust property of, or in the possession of Platinum Coast, wherever situated, including all trust accounts of Platinum Coast in financial depository institutions, and of any other trust property in which Platinum Coast has an interest regardless by whom it may be held on an ongoing basis pursuant to this Court's order;

(b) To retain and employ such attorney(s) to assist, advise and represent the receiver in the performance of his duties and responsibilities as the Court may approve upon written application of the receiver;

(c) To retain and employ Dominic LoBuglio, CPA, as his accountant, and such other such persons, clerical and professional, to perform such tasks as may be necessary to aid the receiver in the performance of his duties and responsibilities;

(d) To be the sole signator on all trust bank accounts of Platinum Coast;

(e) To bring such proceedings as are necessary to enforce the provisions hereof;

(f) To bring such actions as are necessary to modify the provisions hereof;

(g) To make such payments and disbursements from the trust property so taken into custody, control, and possession of the receiver or otherwise received by him, as may be necessary and advisable in discharging his duties as receiver;

(h) To preserve trust property;

(i) To institute, prosecute, defend, compromise, intervene and become a party either in his own name or in the name of Platinum Coast to such suits, actions, or proceedings as may be necessary for the protection, maintenance, recoupment or preservation of the trust property of Platinum Coast and its escrow parties, with prior court approval; and

1 (j) To divert, take possession of and secure all mail of Platinum Coast, in order to screen
2 such mail for mail relating to the trust property, returning non-trust property mail to Sadek, the
3 director, chief financial officer and sole shareholder of Platinum Coast, and to effect a change in the
4 rights to use any and all post office boxes and other mail collection facilities used by Platinum Coast.

5 B. The receiver is hereby vested with, and is authorized, directed, and empowered to
6 exercise, all of the powers of Platinum Coast's officers and directors or persons who exercise similar
7 powers and perform similar duties, with respect to the trust property, whose authority is hereby
8 suspended; and Platinum Coast's officers, agents, employees, representatives, directors, successors in
9 interest, attorneys in fact and all persons acting in the concert or participating with them, are hereby
10 divested of, restrained and barred from exercising any of the powers herein vested in this receiver.

11 C. Any local, state or federal law enforcement and regulatory agency having jurisdiction
12 over matters relating to Platinum Coast's business shall be entitled to review, without exception, all
13 reports of the receiver and all books, records, and files on Platinum Coast in the possession of the
14 receiver at any time during normal business hours, and to make any abstract or copies of said
15 documents as it desires.

16 D. Platinum Coast and its respective officers, directors, agents, servants, employees,
17 successors, assigns, affiliates, and other persons or entities under their control and all persons or
18 entities in active concert or participation with them, and each of them, to turn over to the receiver
19 records, documentation, charts and/or descriptive material, which relate, directly or indirectly, to the
20 trust property of Platinum Coast or otherwise belonging to its escrow parties, now held by Platinum
21 Coast or any of them.

22 E. This Court will retain jurisdiction of this action in order to implement and carry out
23 the terms of all orders and decrees that may be entered herein or to entertain any suitable application
24 or motion by Petitioner and/or receiver for additional relief or modification of any order made herein
25 within the jurisdiction of this Court.

26 F. During the pendency of this receivership, except by leave of court, all parties to
27 escrows held by Platinum Coast and any other persons seeking relief of any kind, in law or in equity,
28 from Platinum Coast relating to the trust property, and all others acting on behalf of any such escrow

parties or other persons including sheriffs, marshals, servants, agents and employees are restrained from:

- (1) Commencing, prosecuting, continuing or enforcing any suit or proceeding;
- (2) Executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned or in the possession of Platinum Coast or its affiliates, or the receiver appointed herein, wherever situated;
- (3) Taking, retaining, retaking or attempting to retake possession of any trust property;
- (4) Withholding or diverting any trust property obligation;
- (5) Doing any act or other thing whatsoever to interfere with the possession of or management by the receiver herein and of the trust property, controlled by or in the possession of Platinum Coast or to in any way interfere with said receiver or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the Platinum Coast trust property.

G. At such time as the financial condition of the trust property has been ascertained by the receiver and at such time as the trust property has been marshaled and all trust liabilities have been determined, the receiver shall file an application with the Court for disposition of such trust property. The application shall propose in detail the winding up and the distribution of trust funds. If necessary, the receiver shall be authorized to propose and carry out a partial distribution, retaining such funds pending final distribution as are necessary to finance any pertinent litigation or the remaining operation of the receivership.

H. The receiver shall be paid an hourly rate of \$460.00 for his services and shall be entitled to reimbursement for usual and customary expenses, including out-of-pocket expenditures on behalf of the receivership estate, which shall be paid from the trust account funds of Platinum Coast, including the restitution paid by Vazquez, and that the State of California shall have no liability whatsoever for any costs, fees and/or out pocket expenses that may result from such receivership. The receiver and any professional hired by him shall make application to this Court on a monthly basis for payment of reasonable fees and expenses incurred by the receiver or such

1 professional, and shall be entitled to payment of said fees and expenses on account as hereinafter
2 provided. Copies of such applications to the Court shall be promptly served on all attorneys of
3 record for parties in this action, who shall have ten (10) calendar days following the filing and
4 service of such application to file any objections thereto with the Court, and serve any such
5 objections by facsimile and mail on the receiver. If no objections are filed with the Court and served
6 within the ten (10) calendar day period, the receiver shall thereupon draw funds from the
7 receivership estate sufficient to pay one-hundred percent (100%) of out-of-pocket expenses and
8 seventy-five percent (75%) of such fees, including all professional fees, and other expenses such as
9 in office copying and facsimile charges, without further order of the Court. If any objections are
10 filed, the receiver may draw funds from the receivership estate sufficient to pay any amounts as to
11 which there is no objection, and the Court will conduct a hearing on any objections upon motion of
12 the receiver or the objecting party. At such hearing, the compensation of the receiver or other
13 professional making application, as well as allowable disbursements and expenses, will be
14 determined by the Court, and the receiver will be directed to draw funds from the receivership estate
15 to pay one-hundred percent (100%) and seventy-five percent (75%), respectively, of the amounts so
16 determined by the Court. Notwithstanding such interim monthly payments of fees and expenses, all
17 fees and expenses shall be submitted to the Court for its approval by a properly noticed request for
18 fees, stipulation of all parties or the receiver's Final Account and Report. Upon approval of the fees
19 and expenses of the receiver or other professional, any hold back amounts still due and owing to the
20 receiver or other professional shall be paid from the receivership estate.

21 I. Notwithstanding the provisions of paragraphs H., above, in no event shall fees and
22 expenses be approved beyond that which would leave at least 60% of the existing trust account funds
23 available for distribution to trust funds claimants. Petitioner asserts that the existing trust account
24 balance, as of this petition, not taking into consideration the restitution paid by Vazquez, is
25 \$515,086.09.

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2 J. For an order that the receiver shall not be required to file a bond with the Court in this
3 matter.

4 Dated: December 16, 2008
5 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

6 By _____
7 Blaine A. Noblett
8 Attorney for Petitioner
9 California Corporations Commissioner
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